

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ZIH Corp.,

Plaintiff,

v.

Paxar Corporation,

Defendant.

C.A. No.: 1:03-cv-12358-DPW

**PLAINTIFF ZIH CORP.'S STATUS REPORT
REGARDING THE OHIO LITIGATION**

The Court's Notice of Hearing dated December 2, 2004 directed plaintiff ZIH Corp. ("ZIH") and defendant Paxar Corporation to provide a status report regarding the status of the parallel litigation in the Southern District of Ohio. Pursuant to that notice, plaintiff ZIH hereby provides the following status information:

There are two pertinent cases filed in the Southern District of Ohio. Paxar Americas, Inc. (a subsidiary of Paxar Corporation) filed the first Ohio case on April 23, 2003. It is an infringement action that concerns different patents (seven patents in all) and different accused products than the instant case. The second Ohio case is a declaratory judgment action that Paxar Americas filed on November 25, 2003 (four days after ZIH filed the instant case, and one day after service on Paxar Corporation); this case concerns the same two patents and the same products as the instant case. A status report on each case will be provided below.

1. Status Of The First Ohio Case

As to the first Ohio case, discovery is ongoing. The Ohio court set the "cut-off" deadline for discovery as May 3, 2005. Both sides have made document requests and both sides have

produced documents in response; both sides have served interrogatories and both sides have served responses. Both sides have noticed depositions; no depositions have yet been taken.

Neither side has identified its experts yet. Identification of primary expert witnesses together with a copy of the expert reports is due on February 25, 2005; for rebuttal expert witnesses, the due date is April 6, 2005.

As to the seven patents-in-suit, the parties briefed claim construction issues to the Ohio court. That court held a *Markman* hearing to address those issues on July 15, 2004. The Ohio court has not yet issued an opinion on these claim construction matters.

After the parties filed claim construction briefs, Paxar Americas moved for leave of court on June 7, 2004 to amend its complaint. In its motion, Paxar Americas proposed to amend its complaint in a few ways, including adding to the suit another patent that had issued on March 30, 2004, expanding its claims of infringement to additional products, and introducing new causes of action alleging a federal trademark infringement claim and state deceptive trade practices claims. Defendants Zebra Technologies Corporation, Zebra Technologies International, and ZIH opposed this motion.

On October 20, 2004, Paxar Americas supplemented its motion to incorporate in its proposed amended complaint another patent that issued the day before (i.e., on October 19, 2004). Defendants Zebra Technologies Corporation, Zebra Technologies International, and ZIH also opposed this supplemented motion. The Ohio court has not yet ruled on Paxar Americas' motion and supplemented motion.

2. Status Of The Second Ohio Case

The second Ohio case is a declaratory judgment action filed by Paxar Americas against ZIH and Zebra Technologies Corporation. As noted, it concerns the same two patents and the

same products as the instant case. This case is stayed pending the rulings of this Court in the instant case. The parties filed a joint motion to stay that case on February 2, 2004 and the Ohio court entered the order staying the case on July 16, 2004.

Conclusion

ZIH has provided the status information above in response to the Court's Notice of Hearing dated December 2, 2004. If any significant developments arise in the Ohio litigation prior to the hearing in this matter, ZIH will endeavor to update this Court by promptly supplementing this status report.

Dated: December 13, 2004

Respectfully submitted,

/s/ Brian M. Gaff

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